

Laidlaw Environmental Services and L. Chester Lawson. Case 11-CA-15229

July 18, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On September 13, 1993, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief opposing the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The judge credited Chester Lawson's testimony that in February or March 1992, James Griffin, director of the East Coast Transportation Group, told him that "drivers shouldn't be having these meetings and that the Company would not put up with this and would not put up with union activity." In his Analysis section, however, the judge incorrectly states that Griffin made this statement in January 1992. We correct this inadvertent error and find that it does not affect this decision. Thus, the judge's finding that Griffin's statement was remote in time from Lawson's October 1992 suspension and November 1992 discharge remains true even though it was uttered in February or March 1992 rather than in January 1992.

Moreover, even assuming that the General Counsel established a prima facie case that Lawson's suspension and discharge violated Sec. 8(a)(1), we agree with the judge, for the reasons he states, that the Respondent satisfied its burden of demonstrating that it would have taken the same action even in the absence of Lawson's protected activities. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Paris Favors, Esq., for the General Counsel.
Jacqueline T. Shulman and *Jules M. Steiner, Esqs.*
(*Obermayer, Rebmann, Maxwell & Hippel*), of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on May 17-19 and June 21 and 22, 1993, at Spartanburg, South Carolina. The complaint in this case was filed by the Regional Director for Region 11 of the National Labor Relations Board (the Board) on February 26, 1993, and is based on a charge filed on November 24, 1992, by L. Chester Lawson, an individual. The complaint alleges that Laidlaw Environmental Services (the Respondent) violated Section 8(a)(1) of the Act by unlawfully

suspending and discharging Lawson because of his engagement in protected concerted activities. The complaint is joined by the answer of Respondent which was filed on March 9, 1993, and which denies the commission of any unfair labor practices.

Based on the evidence presented at the hearing including the testimony of the witnesses and the exhibits received at the hearing and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The complaint alleges, the answer admits, and I find that at all times material, the Respondent has been a Delaware corporation with a facility located at Roebuck, South Carolina, where it is engaged in the transportation of hazardous waste products; that during the past 12 months, a representative period of all times material, Respondent, in the course and conduct of its business operations described above, performed services valued in excess of \$50,000 in States other than the State of South Carolina and received at its Roebuck, South Carolina facility goods and services valued in excess of \$50,000 directly from points outside the State of South Carolina; and that Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent operates a hazardous waste disposal and storage facility at Roebuck, South Carolina, and accepts for transport and transports various types of hazardous waste products from locations throughout the country. In the course of its operations the Respondent employs truckdrivers who travel to these various locations and pick up and transport the waste products to Respondent's facility in Roebuck, South Carolina. The Respondent has several divisions of its operations such as the governmental services group (GS) which provides waste disposal and storage services for the Federal government and the transportation group (TG) which transports hazardous waste for GS which accounts for the vast majority of its business. Thermal Oxidation Corporation (TOC) is another division of Laidlaw and has the responsibility for the incineration and storage of hazardous waste. GS must comply with Federal, state, and local laws and regulations and obtain licenses and permits to transport hazardous waste from the generator or shipper of the waste to its destination at various storage facilities and recycling centers including TOC, owned and operated by Laidlaw and other customers for whom it performs its services. In order to comply with its responsibilities GS employs truckdrivers who receive specialized training in the handling of hazardous waste.

Chester Lawson had been employed as a truckdriver by TG since 1988 at the time of his suspension and termination in October and November 1992. It is undisputed that he had received training in the handling and transportation of hazardous waste and was an experienced driver. Lawson testified that he initially received 3 days of training and then was given 40 hours of training by Laidlaw. He was not permitted to drive a truck containing hazardous waste until the completion of this training.

In October 1991 the drivers at the Roebuck facility were dissatisfied with working conditions and pay and benefits and decided to meet among themselves to discuss these matters. Lawson wrote a note for a meeting to be held among the drivers on Sunday, October 27, and placed a copy in each driver's mailbox at Roebuck. The note stated that the meeting was for drivers only and stated that any questions concerning the meeting should be directed to Lawson or to driver Wayne Keltron. At the meeting attended by approximately 15 drivers, a number of concerns regarding pay and benefits and working conditions were discussed and at Lawson's suggestion the drivers agreed to limit their complaints to matters which were of common concern to a significant number of employees for presentation to Laidlaw's management. Lawson took notes during the meeting and the drivers narrowed their complaints to a list of 17. Lawson typed a letter to James Griffin, the director of the East Coast transportation group. The letter stated it was from the Roebuck Laidlaw drivers and set out an attached list of the 17 complaints and requested a response by November 15 and suggested a group meeting with the drivers and management. The letter which was unsigned was placed on Griffin's desk by Lawson on October 29 in Griffin's absence. In response to the letter, a meeting was held between management and the drivers in mid-November attended by 12 to 15 drivers and 4 to 5 members of management including Griffin, Roebuck Terminal Manager Bonnie Blackwell, Roebuck Operations Manager Ann Jeffords, Dispatcher Ailene Yarborough, and also Purchasing Agent Frank Bright from Laidlaw's headquarters in Columbia, South Carolina. In addition a representative from the Caterpillar Company was present as some of the complaints had been about new trucks recently purchased from Caterpillar. At the start of the meeting Griffin announced that the Caterpillar representative was going to discuss the trucks and that he was going to show a film. Lawson testified at the hearing that he stood up and stated that he was the spokesman for the drivers and that they were on their own time and did not want to hear this but wanted to discuss the 17 complaints the drivers had turned in to management but that other drivers stated they wanted to listen and the meeting proceeded with the presentation by the Caterpillar representative and then continued with discussion of the complaints with Lawson and other drivers participating therein. James Griffin, the director of the East Coast transportation group, testified that at this meeting Lawson stood up and said, "We didn't come here to talk about those damn trucks. We're here, and I'm the spokesman, and we're here to talk about our concerns on pay and some other issues." Griffin testified further that Lawson then said, "If that's what you're going to talk about, we'll just get up and leave now." Lawson then started to walk out but truckdriver Ed Dennis said, "[Y]ou're not speaking for me." Other drivers nodded in agreement with Dennis and Griffin asked Lawson "Chester, let's go through this meeting and address all these concerns." Griffin testified that the meeting then went forward. I credit Griffin's version as the more accurate as to what Lawson said at the meeting although there is no significant difference between his testimony and that of Lawson concerning this. The foregoing account of this meeting was essentially corroborated by truckdriver Dennis, Terminal Manager Bonnie Blackwell, and Operations Manager

Ann Jeffords who also testified at the hearing and I credit it.

Subsequently another meeting was held by Laidlaw's management with the drivers in mid-December to discuss a pay proposal made to the drivers by management. The drivers were dissatisfied with the new pay proposal which had been presented to them on November 21 as they contended it would result in lower earnings. On January 6 or 7, 1992, Lawson put a letter on Griffin's desk which he had typed with the drivers' response to the proposal which was discussed at the drivers' meeting of November 21. In the letter the drivers expressed their opposition to the pay proposal as well as addressing other matters with which they were dissatisfied and were requesting be changed and or improvements be made.

Lawson testified that in February or March 1992 Griffin called him into his office and in the presence of Bonnie Blackwell told him that he had his letter. Lawson told Griffin that it was not his letter but rather was the drivers' letter. Griffin then told him that the drivers' response was being reviewed and the drivers "shouldn't be having these meetings and that the Company would not put up with union activity." Lawson told Griffin that union activity was not mentioned in any of the drivers' meetings and was not part of their plan but that they wanted to bring the matter to the Company's attention to try to resolve it. Griffin and Blackwell both denied that Griffin made any comment to Lawson about a union. I credit Lawson in this regard.

Lawson testified further that although in the past years that he had been employed prior to 1992, the employees had received a general wage increase around the first of April, none was received in April 1992. In June 1992 Respondent's vice president of human relations, Robert Arquilla, told Griffin to call a meeting of the drivers concerning pay and other issues and to make it mandatory to ensure that all the drivers would be there. The meeting was conducted by Arquilla and was also attended by Mike Faucette to whom Griffin reports. Arquilla and Faucette maintain their offices at the Respondent's headquarters in Columbia, South Carolina. Prior to this meeting according to the testimony of Griffin, Blackwell, and Jeffords, whom I credit in this regard, Arquilla informed them that he would ask them to leave shortly after the start of the meeting so that the drivers could raise any complaints and discuss any areas of concern without fear of retaliation by members of local management and they did so after the start of the meeting. Prior to this meeting Griffin had called the drivers in and talked with them individually. Griffin also talked to Lawson prior to this meeting and told him that he had not been aware that the drivers were disgruntled. At the meeting, Vice President of Human Relations Robert Arquilla spoke and said that they were going to discuss the matters raised by the drivers. Lawson testified that he spoke up and said that some of the drivers did not feel free to talk because of fear of retaliation and according to Lawson Arquilla asked the members of the Roebuck terminal management (Griffin, Blackwell, and Jeffords) to leave which they did. The employees then discussed various matters which had been included in the prior meetings such as the trucks, pay, and sick leave. Lawson did most of the talking among the drivers prompting Arquilla to ask that Lawson let the other drivers talk. Lawson told Arquilla that the drivers had met outside before the meeting and had agreed to let Lawson speak for

them. After this discussion the local management members returned to the meeting and then Griffin discussed these items. There was substantial discussion concerning the issue of receiving pay for periods when drivers were required to wait at other facilities to be loaded by the shipper. The discussion became involved and at one point when Griffin was explaining the Company's position Lawson contended that it was not fair and Griffin told him to sit down and shut up as he was confusing the issue. The meeting ended at that point. Lawson testified that none of the other drivers had been talking. This was disputed by Griffin, Blackwell, and Jeffords who testified that other drivers had also participated in the discussion. Truckdriver Roy Brown testified that Lawson had served as the spokesman for the drivers in the past but at the meeting conducted by Arquilla there was no specified spokesman and four or five of the drivers did a good deal of talking. I find the foregoing evidence demonstrates that Lawson acted as a spokesman for the drivers a significant amount of the time at the various meetings attended by the drivers. There were no further meetings. However, on September 15, 1992, Griffin issued a memorandum addressing the issues that had been discussed in the drivers' meeting after receiving answers to the questions raised at the June meeting from Arquilla and Faucette.

Lawson was suspended for 3 days commencing October 1, 1992, by Griffin assertedly for his conduct in connection with his pickup of a load of hazardous waste at a naval base where he allegedly arrived late, then refused initially to drive up a narrow road, and contended that the truck would not fit, failed to help in the loading process by checking the load as the drivers are required to do, and then consumed food in a hazardous waste area shortly prior to an expected visit by a naval official which could have led to sanctions including the loss of the contract that GS had with the United States Government.

The incident giving rise to the suspension occurred in connection with a pickup in Groton, Connecticut. Mark Helm, the transportation manager for GS, testified that GS is a division of Laidlaw Environmental Services which handles military waste removal from all over the country and abroad. TG is a separate entity and acts as a subcontractor for GS in the transportation of hazardous waste. Helm has the responsibility for managing the movement of government waste throughout the United States utilizing approximately 400 to 500 trucks which are obtained by contracting with various companies including TG to supply the trucks and the drivers to haul the hazardous waste. Helm's office is in Saukville, Wisconsin. GS is not required to use TG to transport the waste. The decision is based on competitive bidding although they try to use TG but it is not mandatory that they do so. GS receives \$48-\$50 million of revenue from government contracts which accounts for about 20 percent of Laidlaw's total revenues. On September 21, 1992, Helm received a telephone call from David Ward, a contract manager for GS in Groton, Connecticut, where GS has a contract to pick up waste at the United States Coast Guard Academy. GS had contracted with TG and a truck had been dispatched to pick up waste at the Coast Guard facility. Ward informed him that the TG truck had not shown up as scheduled at 8 a.m., and they were looking for it. GS has a field manager who works onsite to do the labeling, the handling of containers (drums), and to assist in the loading of trucks for the

removal of waste off the sites. The truck was scheduled for several pickups in the Groton, Connecticut area, including the Naval Sub Base and the Coast Guard Academy. After Ward's call, Helm called the dispatcher to find out if the truckdriver had called in with any problems. About a half hour later he received another call from Ward who said he had found the truck at the Naval Sub Base and had directed him to the Coast Guard Academy but that the driver (Lawson) had said that this was where he had made the pickup last year. Ward told Lawson that their procedures had changed and that GS had made the pickup before and directed Lawson to proceed to the Coast Guard Academy. Lawson said he could not drive the truck into that location as it was too narrow. Ward told him that other trucks had been able to do so and convinced him to proceed with the pickup. Helm testified further that the next day he received another telephone call from Ward who was complaining about additional problems with Lawson. Helm told Ward to write him a letter and he would petition TG not to send Lawson back to any more government contracts. Ward complied with this request and his letter states as follows:

15 September 1992

At 8:20 a.m. *I had to run an errand on the submarine base in Groton, CT.* As I passed the officer's club I saw a Laidlaw semi in the parking lot. [The truck was scheduled to be at the Coast Guard Academy in New London at 8 a.m.]. I pulled in to tell the driver, Chester Lawson, that he was at the wrong location. He then told me that he knew he was at the wrong location and there was no way he could get his semi into the waste storage area at the USCGA. I explained to Chester that other transporters had picked up at the location with no difficulty. We agreed that he would go over and at least try. I was not along for the rest of the day, but the two other stops scheduled that day did not happen. The chemist in charge of the shipment explained that the driver was not helpfull [sic], and could have even been a hinderance. It was agreed upon that I would go along the next day to ensure that we made the one stop scheduled that day after we made the other two we missed the day before. The chemist had arrangements to meet Chester the next morning at a local hotel at 7:00 a.m.

16 September 1992

The next morning we had a five minute delay in getting out of the office. As we neared the hotel I tried to raise Chester on the C.B. radio-previous times when we were meeting drivers at hotels or truck stops, the drivers are in the trucks with the engine running when we get there. We were unable to raise Chester on the radio.

Pulling into the parking lot I could not see the driver in the cab. I went into the restaurant to see if he was getting coffee. I did not see Chester and the cashier did not remember seeing a person who fit his description.

As we were going back out to the parking lot we came upon Chester, suit cases in tow, coming into the lobby to check out (the time now is about 7:10).

After we find Chester he has to make entries in log books etc. We leave about 7:20.

At our first pickup Chester spent 15–20 minutes in the truck doing nothing.

On the way to the second pickup for the day Chester comes over the radio stating that he knows where we are going and that there was no way he could get his truck to that location. I again explain to Chester that it has been over a year since he has been to these sites, that since that time, we have been into this site also with other transporters with no difficulty getting the tractor trailers in. Chester agrees to give it a try.

When we get to the site there is some delay waiting on a government representative. We are parked in front of a diner I suggest that we go inside to get a cup of coffee and a biscuit (it should be noted this is still the morning and breakfast items are already made and on the counter) Chester orders a hamburger and french fries which will have to be cooked. In all fairness Chester stopped eating when the gov't rep showed up, but by this time the contract office representative—my customer—is beginning to become put out with the truck driver's attitude.

At the last pickup, the only one actually scheduled for that day, we had to finish labeling the drums. In cases like this, the truck drivers that we usually use will load the truck as the drums are finished being marked. Chester agreed to this and was actually being useful until a female base employee arrived. She was at the site because the Secretary of the Navy was due to visit the site. As soon as she arrived there was no more assistance from Chester. Now in no way was this lady an official representative of the base who we were working with.

When we began loading the truck, I went and looked for Chester (it being the driver's job to inspect the material going into the truck to verify the proper marking and container, etc.). I located him outside of the storage area. I whistle for his attention (it being some distance), indicate [sic] that we are loading the truck and that I would like for him to be a part of this.

It is at this point that Chester approaches the back of the truck with a candy bar and soft drink in hand. I inform him that this being a hazardous waste storage area, he could not have food & drink in the area and that he would have to get rid of them. His response was to state that he was getting rid of them as fast as he could, at which point he shoves the candy bar in his mouth and upturns the soft drink, finishing it.

Preface: The CT contract is an all pounds contract, basically this means all items are weighed. There was a need to double stack 12 drums. To alleviate driver concerns, I instruct my chemist to have Chester place the drums, to best distribute the weight (in light of axel weights). After we are done, Chester states that he is overweight. I explain to him that all the drums were weighed and that we loaded 29,000 pounds, a perfectly legal truck. Chester then states that he will be overweight on his axels. It is quite late by this time and the base scales are closed. I explain that there is a truck stop 7 exits to the north that may have a set of scales where he could check his axels. I then give Chester my home phone number, with the explanation that if he is

over on the axel I would come out and help him move drums.

Around 8 pm Chester calls stating that there are no scales at the truck stop and that his dispatch said we have to find him a set of scales or they will bill us another nights demurrage. I tell Chester that until [sic] morning, I knew no place for him to weigh. Chester then informs me that if I agree to pay any fines levied due to being overweight, he would go ahead and give the state station a try. I explain that I could not agree to that as it would be wrong. I then explain that the weight station to the south that he is concerned about, has not been open since I moved to CT in May. I asked him to get on the C.B. and find out (from another truck coming from the south) if that station were open or closed. If they were closed, to go to the truck stop south of there where we both knew there was a set of scales. If he was over on an axel there, I would still come and move drums with him. If the station was (not sic) open, to call me and I would get him weighed at the base that morning.

I believed there was no danger of the load being in violation. If I believed there could have been the chance of being in violation, I would have never let him leave the base until the problem was corrected.

Signed

David A. Ward
Contract Manager

Helm testified that he wrote to Griffin requesting the removal of Lawson as a driver from GS pickups of hazardous waste. The letter is as follows:

To: Jim Griffin
From: Mark Helm
Location: Saukville, WI
Subject: Request driver removed from Governmental Service pickups
Date: September 21, 1992

John Miklich said I should notify you of a problem we had with one of your drivers the other day. I'm requesting his removal from picking up Governmental Services loads in the future. It started September 15, 1992 when Chester Lawson (truck P873) showed up at the wrong pickup point approximately 20 minutes late. It was just dumb luck our contract manager saw him at the Naval sub base instead of the U.S. Coast Guard academy.

Chester became argumentative with our people and stated that last year this is where he came to pick up the Coast Guard material and that there was no way he could do the pickup at the Coast Guard Academy. The spot is tight but it has been done several times by other transporters. This uncooperative attitude delayed the pickup even further, forcing the remaining two pickups to be made the next day.

The next day the same attitude was carried over. When loading the truck, Chester was everywhere but loading the van. Our people were instructed that a driver might not have to help because [sic] of hours, but he still is to supervise the loading of his vehicle. Ches-

ter was also eating food while the truck was being loaded. He was asked to get rid of the food and his response was I'm eating as fast as I can.

Only a short time after the food incident which violates company policy, the secretary of the Navy came through on a site visit. He was introduced to Chester. This would have been quite embarrassing if Chester was found to be eating on the worksite at that time.

I am aware there are two sides to each story and this was the version given to [sic] me by our contract manager with the request Chester does not return to his contract.

This information is for your review.

After the receipt of this information Griffin contacted Vice President of Human Relations Arquilla and expressed his initial opinion that Lawson's conduct as set out in the letters of Ward and Helm warranted discharge. Arquilla agreed but Griffin told him he would talk to Ward and Helm to discuss what had occurred. After checking with them and discussing the matter with Blackwell and Jeffords he decided that a 3-day suspension would be appropriate. This had been recommended by Jeffords who expressed the opinion that tardiness was not one of Lawson's problems. Griffin again discussed the matter with Arquilla and told him that after looking into the matter he thought a 3-day suspension was appropriate as there was evidence that Lawson did help and he believed that some of the lack of cooperation and attitude problems may have been the result of a misunderstanding by Ward as Lawson was given to good natured humor which may have not have been well received by Ward. He made the decision to suspend knowing that continuing to employ Lawson would result in scheduling problems as GS regularly used 12 to 15 trucks. Arquilla agreed with the decision to suspend Lawson. Subsequently on October 12, 1992, Griffin and Blackwell and Jeffords met with Lawson and he was suspended for 3 days retroactive to commence on October 1, 1992. At that meeting Lawson took exception to the suspension as unwarranted and wanted to contact Ward but Griffin refused to let him do so as Lawson admitted he was eating in a hazardous waste area which is a violation of government regulations and company rules. At one point the meeting became confrontational as Lawson yelled, according to the testimony of Griffin, Blackwell, and Jeffords whom I credit in this regard. Lawson testified that at one point Griffin came from around his desk and bumped him. Griffin denies bumping him but admits coming around his desk and telling Lawson to stop yelling or to leave and to get Mark Ashton, the safety officer, to explain to Lawson the serious nature of eating in a designated hazardous waste area which could result in the ingestion of hazardous waste or fumes. Blackwell and Jeffords testified they did not see Griffin bump Lawson. Whether or not Griffin bumped Lawson it is obvious that the situation was tense. Griffin testified that he then called Arquilla on the speaker phone and told him that Lawson was refusing to accept the suspension and was insisting on contacting the customer who had complained about him and that there was no point to this as Lawson had admitted that he had eaten food in a hazardous area. Arquilla told Lawson he agreed with Griffin and that Lawson should accept it and get on with his job according to the testimony of Griffin, Blackwell, and Lawson whom I credit in this regard. Lawson

testified that he was told to accept the suspension and not to worry about it as he had no previous customer complaints. I credit the testimony of Griffin, Blackwell, and Jeffords who testified that Lawson was not told anything to the effect that the suspension was of no moment. Griffin testified further that he subsequently told Lawson that if he ever yelled at him like that again he would be fired. I credit this testimony also.

Lawson's suspension notice was issued by Jeffords on October 5, 1992, and made effective for 3 days beginning Thursday, October 1 through Monday, October 5, 1992, and lists eating on the base in Connecticut and inappropriate attitude toward the customer including argumentative remarks as the reasons therefor. The notice states in pertinent part that the offenses of eating on the base and inappropriate attitude and remarks would normally have resulted in termination, but that based on his response a less severe punishment of suspension was imposed. It further states, "Although you admittedly are guilty of eating on base and joking responses which may have been misunderstood, it is apparent that you tried to provide assistance during the loading process."

On October 22, 1992, Lawson was assigned to pick up and transport a load of 37 drums of paint related material, a flammable liquid containing Methel Ethyl Ketone, Toluene, and Methanol. This was a hazardous waste product to be transported from Van Waters & Rogers Inc. in Chattanooga, Tennessee, to Thermal Oxidation Corporation (TOC) another unit of Laidlaw which receives and processes hazardous waste at their facility in Roebuck, South Carolina. The generator of the waste was Munekata of Dalton, Georgia, and it had been initially picked up by Van Waters & Rogers Inc. which acts as a broker for various companies who generate hazardous waste. As a truckdriver for Laidlaw, Lawson had the responsibility for inspecting the drums containing the hazardous waste to ensure that they were in good condition for safe shipping and were not leaking and that all the waste was contained in the drums to be shipped as it is a violation of Department of Transportation rules and regulations as well as Laidlaw's rules and regulations to ship hazardous waste which is not properly contained to ensure that hazardous waste is not spilled along the roads and highways traveled by the trucks transporting the hazardous waste. In this instance Lawson called TG and spoke to Jeffords and informed her that the letter of certification necessary to ship the waste had been left behind in Dalton, Georgia, when the shipment had been picked up by Van Waters & Rogers from Munekata, the generator of the waste. The paperwork was not necessary to permit Laidlaw to transport the waste but would have prevented the ultimate disposal facility from being able to receive the load. Lawson offered to and was permitted to pick up the paperwork from Munekata as Dalton, Georgia, was on the way back to his destination at Roebuck, South Carolina. At the time of his conversation with Jeffords, she inquired as to the condition of the drums and Lawson told her that they had to be cleaned off to put the labels on but had been cleaned off. Lawson proceeded and transported the load to TOC at Roebuck and arrived in the early morning hours of October 23 and left the load at the dock. When the trailer was opened in late afternoon of Monday, October 26, it was discovered that 34 of the 37 drums contained solidified waste on them which made them unfit for shipment. The record is replete with evidence that the drums

had an accumulation of waste on them as borne out by the testimony of Calvin Ray Hendrix, the TOC container manager supervisor who personally observed the accumulation of waste on the drums when the back doors of Lawson's truck were opened on October 26 and the testimony of David DeSha, the environmental manager who testified that on October 26 he received a telephone call from Chris Crisp, the environmental technician in the compliance department informing him that a load of unacceptable drums of hazardous waste had been delivered to the TOC facility. DeSha directed Crisp to video tape and photograph the drums and Crisp video taped and photographed only those drums he observed when the truck was initially opened but he visually observed the remainder of the drums. Crisp testified he observed both dry and damp residue on the drums and that the dry substance appeared gray in color and the damp substance appeared black in color. Crisp testified that in his 8 years as an inspector he had never observed drums with so much residue on almost the entire load as occurred here. Moreover, DeSha testified that the authorization number on the drums was the same one on the authorization request form and on the hazardous waste manifest. DeSha informed Griffin that it would be necessary to clean the drums as they could not be accepted as they were not in containment and could not be shipped back to Van Waters & Rogers as they were unsafe for shipping for shipment. Accordingly, Hendrix and two of his assistants cleaned the drums with scrapers, wire brushes, and a chemical solution, a process that took the three men 3-1/2 hours. I credit the foregoing testimony of Hendrix, Crisp, and DeSha and find that the drums delivered by Lawson contained accumulated hazardous waste on them. I further find that this accumulation of hazardous waste was in violation of Federal and state regulations and Laidlaw's rules. Jeffords testified that she questioned Lawson about this when she talked to him on October 27 and asked him if he had observed any material on the drums and that Lawson told her that he had examined the drums at Chattanooga and had observed that the drums were dirty on the tops and sides but believed them to be covered with dirt rather than hazardous waste from the drums. On November 9, 1992, Respondent terminated Lawson for transporting hazardous waste in an unsafe manner and for continued performance problems and for his attitude. On that date Lawson was called into the office and was terminated by Blackwell in the presence of Jeffords and Griffin. There was very little discussion at this meeting. Lawson was handed his termination notice and asked to sign it which he did.

The General Counsel contends that Lawson was suspended and terminated because he engaged in protected concerted activities on behalf of himself and his fellow truckdrivers concerning wages and conditions of employment as set out above and that he incurred the displeasure of Respondent and its management and in support thereof cites the meetings and the threat made by Griffin that the Respondent would not stand for it if the drivers attempted to organize a union. The General Counsel also relies on the timing of the suspension incident which commenced with a pickup on September 15, and the issuance of the memorandum of September 15 by Griffin addressing the concerns of the drivers expressed at the June meeting.

The Respondent contends that Lawson's engagement in protected activities as a spokesman was insignificant and no

greater than that of other employees who expressed themselves freely about their complaints and problems. Rather, the Respondent contends that Lawson was suspended for serious performance problems and attitude problems that continued throughout his tenure. The Respondent produced numerous verbal warnings issued to Lawson for not filling out his log book and other paperwork, for staying in motels without permission instead of sleeping in the sleeper in his truck, exceeding the allotted time of 3 minutes per day for personal phone calls made with the Respondent's credit card, among others. The Respondent contends that Lawson was a capable employee who basically wanted to do things his way and would not follow rules. Respondent contends as supported by the testimony of Griffin, Blackwell, and Jeffords that the suspension and termination were fully justified and were not motivated by any animus against Lawson because of his engagement in protected activities. These witnesses testified that there was no prior case when a driver had accepted and transported a load of hazardous waste which was not contained within the drums and that this could have subjected the Respondent to fines and possible loss of their license to transport hazardous waste. Griffin also testified that since 1987 there have been four other drivers terminated for various serious rule violations without having received prior verbal warnings. One driver unhooked his tractor from a tanker and abandoned the load and vandals opened the valve to the tanker and the load was spilled out. Another driver became "involved in drinking and all and had some problems with the law" while on an overnight trip necessitating that another driver be sent to retrieve his truck. Another driver refused to stay overnight at an out of town location when his load was not ready. Another driver took his truck home rather than return it to the Respondent's truck yard.

Analysis

I find that the General Counsel has failed to establish a prima facie case of a violation of the Act. Although I find that the Respondent clearly did have knowledge that Lawson had emerged as a spokesman for the drivers concerning their wages and working conditions and I find that Griffin made the threat in January to Lawson that the Respondent would not stand for the employees attempting to organize a union and that the employees should not be having any more meetings among themselves and that Griffin showed his displeasure when he told Lawson to shut up at the June meeting, I find that the January threat was remote in time to the suspension and discharge in this case and I do not regard the comments by Griffin in the June meeting to be any more than an expression of his annoyance with Lawson's continued discussion of one of several matters discussed during the meeting. With respect to the suspension and the discharge themselves I do not find them to be other than discipline warranted by the serious nature of the offenses. There was no evidence that either incident was in any way a setup on Respondent's part or that the Respondent was seizing on them to use as an excuse for getting rid of Lawson. Rather, the imposition of the suspension appeared consistent with a desire to retain Lawson as an employee particularly since his removal from the GS work was going to cause a scheduling problem. Moreover, I find that the transportation of the exposed hazardous waste was a serious matter caused by Lawson's failure to carefully inspect the load and exposed

the public to the waste as it traveled down the highway and could have exposed the Respondent to serious consequences such as fines or loss of their license to transport hazardous waste. I thus find there was no evidence that the suspension and discharge were pretextual or that there was any evidence of disparate treatment. Assuming *arguendo* that a *prima facie* case was established, I find it has been rebutted by the preponderance of the evidence as I find that Lawson was suspended and discharged for legitimate business reasons and would have been suspended and discharged even in the absence of Lawson's engagement in any protected activities. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* on other grounds 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

CONCLUSIONS OF LAW

1. Laidlaw Environmental Services is an employer within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent did not violate the Act by its suspension and discharge of Chester Lawson.

Accordingly, on these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The complaint is dismissed in its entirety.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.